IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.E.A. No. 2 of 2007

DATE OF DECISION: 23.8.2007

Commissioner of Central Excise Delhi-III

…Appellant

Versus

M/s Northern Minerals Ltd.

…Respondent

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

Present: Mr. Sanjeev Kaushik, Advocate,
for the appellant-revenue.

JUDGMENT

M.M. KUMAR, J.

This appeal filed by the appellant-revenue under Section 35G of the Central Excise Act, 1944 (for brevity, 'the Act'), prays for quashing order dated 29.6.2006, passed by the Customs, Excise and Service Tax Appellate Tribunal, New Delhi (for brevity, 'the Tribunal). The appellant-revenue has claimed that the following substantial question of law would arise for determination of this Court:-

> "Whether the refund claim of excess amount of interest paid by the party under Section 11B of the Central Excise Act, 1944, is legally correct?"

Brief facts of the case necessary for disposal of the controversy raised are that the assessee-respondent M/s Northern Minerals Ltd. are engaged in the manufacture of pesticides and insecticides falling under Chapter Heading No. 3801.10 and 3808.20 respectively of the Central Excise Tariff Act, 1985 (for brevity, 'the Tariff Act'). It filed refund claim of Rs. 3,26,027/- under Section 11B of the Act

on the ground that they had paid excess amount of interest @ 24% per annum instead of 15% per annum on the differential duty payable during the year 2001-2002. The adjudicating authority vide order-in-original dated 13.1.2004 (P-1) rejected the refund claim on the ground that Section 11B of the Act merely provided for refund of duty paid erroneously and not interest. It was further held that rate of interest applicable during the year 2001-2002, in fact, was 24%. It was claimed that the interest has been correctly paid.

On appeal before the Commissioner (Appeals), the order-in-original was upheld and the appeal was dismissed vide order dated 5.7.2004 (P-2).

The respondent-assessee filed second appeal before the Tribunal and the order passed by the Commissioner (Appeals) has been set aside by the Tribunal vide final order dated 29.6.2006 (P-3) and the appellant-revenue has been directed to refund the excess amount of interest paid by the respondent-assessee to the extent of period from 13.5.2002 to 26.6.2002. The operative part of the order passed by the Tribunal reads as under:-

> " Considered the submissions made at length by both the sides and peruse the records. It is not disputed that interest payable by the appellants on differential duty confirmed against him after the final assessment of the clearance made by them under provisional assessment. Interest payable during the relevant period was 24% per annum but on 13.5.2002 notification No. 19/02-CE (NT) was issued for effective rate of interest under Section 11AB of the Central Excise Act, 1944. It is the submission of the advocate for the appellants that since the Statute itself mandates for recovery of interest at the rate of 15% from 13.5.2002 the department could not have demanded the excess interest from him. I find force in the appellants

contention that if the Statue itself says that the interest to be charged on the duty payable/short paid by the assessee is 15% then the department cannot sit with excess amount of interest paid by the appellants may be due to oversight or due to mistake."

The contention of the department that Section 11B of the Act does not contemplate refund of interest has been rejected by the Tribunal.

After hearing learned counsel at a considerable length we find that the instant petition is wholly without any merit. It would be appropriate to make a reference to the relevant provision of Section 11B of the Act, which reads as under:-

"**11B. Claim for refund of duty:**

(1) Any person claiming refund of any duty of excise may make an application for refund of such duty to the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise before the expiry of one year from the relevant date in such form and manner as may be prescribed and the application shall be accompanied by such documentary or other evidence (including the documents referred to in section 12A as the applicant may furnish to establish that the amount of duty of excise in relation to which such refund is claimed was collected from or paid by him and the incidence of such duty had not been passed on by him to any other person:

Provided that where an application for refund has been made before the commencement of the Central Excises and Customs Laws (Amendment) Act, 1991 (40 of 1991), such application shall be deemed to have been made under this sub-section as amended by the said Act and the

same shall be dealt with in accordance with the provisions of sub-section (2) as substituted by that Act;

Provided further that the limitation of one year shall not apply where any duty has been paid under protest."

A perusal of the aforementioned provision shows that refund can be claimed on any duty of excise by making an application to the competent authority before the expiry of one year in the prescribed form and manner. It is further required to accompany documentary or other evidence which may establish that amount of duty of excise in relation to which such refund is claimed was collected from or paid by him and that incidence of such duty had not been passed on by him to any other person.

It is also considered appropriate to make a reference to Section 11AB of the Act and the same reads as under:-

"**11AB. Interest on delayed payment of duty:**

(1) Where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, the person who is liable to pay duty as determined under sub-section (2), or has paid the duty under sub-section 2(B), of section 11A, shall, in addition to the duty, be liable to pay interest at such rate not below ten per cent and not exceeding thirty-six per cent per annum, as is for the time being fixed by the Central Government, by notification in the Official Gazette, from the first date of the month succeeding the month in which the duty ought to have been paid under this Act, or from the date of such erroneous refund, as the case may be, but for the provisions contained in sub-section (2), or sub-section (2B), of section 11A till the date of payment of such duty:

Provided that in such cases where the duty becomes payable consequent to issue of an order, instruction or

direction by the Board under section 37B, and such amount of duty payable is voluntarily paid in full, without reserving any right to appeal against such payment at any subsequent stage, within forty-five days from the date of issue of such order, instruction or direction as the case may be, no interest shall be payable and in other cases the interest shall be payable on the whole of the amount, including the amount already paid.

(2) The provisions of sub-section (1) shall not apply to cases where the duty had become payable or ought to have been paid before the date on which the Finance Bill, 2001 receives the assent of the President.

Explanation 1: Where the duty determined to be payable is reduced by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, the interest shall be payable on such reduced amount of duty.

Explanation 2: Where the duty determined to be payable is increased or further increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, the interest shall be payable on such increased or further increased amount of duty."

A perusal of the aforementioned provision shows that where an amount of excise duty has not been levied or paid or short levied or short paid or erroneously refunded then such a person who is liable to pay the duty, is liable in addition to duty to pay, interest at the specified rates. Similar provision has been made for payment of interest on delayed amount of refund as is evident from the perusal of Section 11BB of the Act. The aforementioned provision reads as under:-

"**11BB. Interest on delayed refunds**.- If any duty ordered to be refunded under sub-section (2) of section 11B to any applicant is not refunded within three months from the date

of receipt of application under sub-section (1) of that section, there shall be paid to that applicant interest at such rate, not below five per cent and not exceeding thirty per cent per annum as is for the time being fixed by the Central Government, by notification in the Official Gazette on such duty from the date immediately after the expiry of three months from the date of receipt of such application till the date of refund of such duty:

Provided where any duty ordered to be refunded under sub-section (2) of section 11-B in respect of an application under sub-section (1) of that section made before the date on which the Finance Bill, 1995 receives the assent of the President, is not refunded within three months from such date, there shall be paid to the applicant interest under this section from the date immediately after three months from such date, till the date of refund of such duty.

Explanation.- Where any order of refund is made by the Commissioner (Appeals), Appellate Tribunal or any court against an order of the Assistant Commissioner of Central Excise, under sub-section (2) of section 11B, the order passed by the Commissioner (Appeals), Appellate Tribunal or, as the case may be, by the court shall be deemed to be an order passed under the said sub-section (2) for the purposes of this section."

It is, thus, evident that payment of interest is inextricably laced with payment of duty in case of delayed payment and also in case of delayed payment of refund amount.

In the present case, it is undisputed that the rate of interest leviable on the respondent-assessee was 15% as was reduced by notification dated 13.5.2002, issued under Section 11AA and Section 11AB of the Act. However, the respondent-assessee had paid interest @

24% per annum erroneously and an amount of Rs. 1,20,809/- has been ordered to be refunded. We find no reason to exclude the payment of interest from the provisions of Section 11B of the Act merely because it uses the expression 'refund of duty' because delayed payment of duty itself attract the payment of interest which is inextricably associated with duty. Moreover, such a collection of interest on account of delayed payment of duty would be unauthorized imposition of tax which is impermissible by the provisions of Article 265 of the Constitution. There is, thus, no merit in this appeal.

For the reasons aforementioned, this petition is dismissed. In view of the fact that a complete frivolous stand has been taken and filing of this appeal could have been avoided, we saddle the appellant with costs of Rs. 10,000/-. The costs shall be deposited with the State Legal Services Authority, Haryana, Chandigarh.

(M.M. KUMAR)
JUDGE

(AJAY KUMAR MITTAL)
JUDGE

August 23, 2007

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FIT FOR INDEXING